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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

No. 73-696

THE EMPORIUM CAPWELL CO.,
Petitioner,

VS.

WESTERN ADDITION COMMUNITY ORGANIZATION,
Respondent.

No. 73-830

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

VS.

WESTERN ADDITION COMMUNITY ORGANIZATION, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia

MOTION OF DEPARTMENT STORE EMPLOYEES UNION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

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Department Store Employees Union, Local 1100, affiliated with Retail Clerks International Association,

AFL-CIO, (herein the "Union") respectfully moves this Court, pursuant to Rule 42 of the Supreme Court Rules, for leave to file a brief in the above-captioned proceeding as *amicus curiae*. In support of this motion, we show the following:

(1) Permission for the Union to file a brief herein as *amicus curiae* was sought from counsel for the various litigants, Emporium Capwell, the National Labor Relations Board and Western Addition Community Organization. Consent was granted by counsel for Western Addition and counsel for the Board, but counsel for Emporium Capwell has refused to consent to the filing of an *amicus curiae* brief by the Union.

(2) The Union has a substantial interest in this proceeding. The Union is, and at all material times has been, party to a collective bargaining agreement with Emporium Capwell and is the exclusive collective bargaining representative of employees of said Employer, including Tom Hawkins and James Joseph Hollins, whose discharges by Emporium Capwell are the central issues to be resolved in this proceeding.[1]

Furthermore, it is apparent from the Petitions which have been heretofore submitted to the Court by Emporium Capwell and the Board that the Union has a direct interest in this proceeding. Both of these parties seek to have this Court reverse the holding of the United States Court of Appeals for the District of Columbia because the Union is the exclusive bargaining representative of Hawkins and Hollins and assertedly the Court of Appeals' decision interferes with

[1]The Union was not a party in the proceedings below.

and frustrates the Union's status as such a statutory representative. The Union is indeed an important party to be heard from in determining whether its status as the exclusive bargaining representative of Hawkins and Hollins has been breached by the decision of the Court of Appeals.[2] Surely, neither Emporium Capwell nor the Board can effectively state what the Union views to be its obligations and rights as the bargaining representative involved herein.

(3) The Union does not believe that the present parties to this proceeding will fully and adequately set forth the questions of law involved herein. Thus, it appears from arguments so far made by Emporium Capwell and the Board that they wish to claim that Hawkins and Hollins acted inconsistently with the Union's status as their exclusive bargaining representative. On the other hand, it is to be expected that Hawkins and Hollins will contend that employees represented by a labor organization may bypass that organization in racial matters when it has not acted "to the fullest extent possible by the most expedient and efficacious means," as suggested in the decision of the Court of Appeals.

It may well be that neither of these extreme positions is appropriate based on the facts in this proceeding and would not establish a fair, effective view of the law. From the arguments made thus far in this proceeding, the Union has no reason to believe that this area for resolution will be adequately presented.

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[2]The Union here has substantial interests in the outcome of the litigation just as did the employer in *N.L.R.B. v. Plasterers Local 79*, 404 U.S. 116, 78 LRRM 2897 (1971).

Wherefore, we pray that this Motion be granted and the Union be allowed to file a brief as *amicus curiae.*

Dated, March 19, 1974.

Respectfully submitted,

DAVIS, COWELL & BOWE,

By BARRY S. JELLISON,

Attorneys for Department Store Employees Union, Local 1100.